IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 24051 of 2004

Between:

1 Assistant Divisional Engineer, South Central Railway, Ongole, Prakasam District.
2 Senior Divisional Engineer, South Central Railway, Bezawada, Krishna District.
3 Senior Divisional Personnel Officer, South Central Railway, Bezawada, Krishna District.
4 Permanent Way Inspector, Kavali Section, South Central Railway, Kavali, Nellore District.

..... PETITIONERS

AND

1 Ch.Vemaiah, s/o Narasaiah, Senior Gangman,
Office of Senior Section Engineer, Permanent Way, South Central Railway, Kavali, Nellore District.
2 V.Kota Reddy, s/o Chenchi Reddy, Senior Gangman,
Office of Senior Section Engineer, Permanent Way, South Central Railway, Kavali, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, writ or direction more particularly one in the nature of writ of certiorari by calling that all the records relating to OA No.186 of 2003 on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench and quash the order dated 17-08-2004 in OA No.186/2003 as illegal, arbitrary and against to the rules in force and to the settled principles of law and quash the same.

Counsel for the Petitioners: MR.A.KRISHNAM RAJU
Counsel for the Respondents: MR.N.KRISHNA MURTHY

The Court at the admission stage made the following:

ORAL ORDER: (per GB.J.)

The Writ Petition is filed by the Railways challenging the order passed by the Central Administrative Tribunal (for short Tribunal) in O.A.No.186 of 2003, dated 17.8.2004.

2. The matter relates to fixation of *inter se* seniority in the cadre of Senior Gangmen in Kavali Section. 5th respondent-P.Venkata Subbaiah in the above OA was initially appointed as Gangman in Tuni Section of South Central Railway and subsequently he was promoted as Senior Gangman on 20.12.1992. Thereafter he was transferred to Ongole Division on mutual transfer on 4.12.1993. The person who was transferred to Tuni in the place of Venkata Subbaiah was promoted as Senior Gangman on 1.3.1993. However, after joining duty in Ongole Section, again the 5th respondent sought for mutual transfer to Kavali Section. Accordingly he was transferred to Kavali Section on 11.8.1995 replacing the Senior Gangman who was transferred to Ongole Section. The next promotion from Senior Gangman is Key Man and the seniority in the Senior Gangman post will be counted for promotion to the post of Key Man. The question which arose is as to the fixation of seniority *inter se* between the 5th respondent-Venkata Subbaiah in the OA as well as the respondents 1 and 2 in the Writ Petition. The Railways recognized Venkata Subbaiah as senior to the applicants before the Tribunal and accordingly he was promoted as Key Man. The said seniority came to be challenged by the applicants-Ch.Vemaiah and V.Kota Reddy. The Tribunal referring to Para-312 of Indian Railways Establishment Manual (for short the Manual) held that 5th respondent-Venkata Subbaiah in the OA has to be declared as junior to the respondents 1 and 2 in the Writ Petition. Aggrieved by the said order, the present Writ Petition has been filed by the Railways.

3. The learned Standing Counsel for Railways submits that the order of the Tribunal is wholly illegal and not sustainable in law. He further submits that the

Tribunal failed to consider the relevant provisions in the Railway Manual and thereby committed an error apparent on the face of the record. In fact, the learned counsel would submit that Para-310 is the relevant Para for determining the seniority when a transfer has taken place on mutual basis while Para-312 is the relevant only in case of transfer on request. Therefore, the Tribunal ought to have considered Para-310 and not Para-312.

4. On the other hand the learned counsel for the respondents 1 and 2 submits that the order passed by the Tribunal is quite valid and legal and it does not call for any interference.

5. The issue that arises for consideration is whether the order of the Tribunal is sustainable in law.

6. Admittedly Venkata Subbaiah, who was 5th respondent in the OA., was appointed in Tuni Section as Gangman and he was promoted as Senior Gangman on 20.12.1992 and thereafter he came to Ongole on mutual transfer on 4.12.1993 replacing an employee, who was promoted to the post of Senior Gangman on 1.3.1993. The fixation of seniority in the case of mutual transfer and request transfer has been specifically demarcated in Para-310 and Para-312 of the Manual, which are extracted hereunder for proper appreciation of the case:

Para-310

> "Railway servants transferred on mutual exchange from one cadre of a Division, office or railway shall retain seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower"

Para 312

> "The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.

Note:-

i. This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.

ii. The expression 'relevant grade' applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted in such grades. No such transfers should be allowed in the intermediate grades in which all the posts are fileld entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment".

7. In this case, the Tribunal has only taken into consideration Para-312 which is only applicable in case of request transfers. But in the instant case what is required to be considered is the fixation of seniority with reference to mutual transfer as contained in Para-310. The question is as to whether respondents 1 and 2 in the Writ Petition would be seniors or they would be juniors to Venkata Subbaiah.

8. As per Para-310 of the Manual, when Venkata Subbaiah came on transfer to Ongole, his date of promotion as Senior Gangman will be counted from 1.3.1993 that is the date when the person whom he replaced was promoted as Senior Gangman. Similarly, on his transfer to Kavali he replaced a person and who was promoted on 1.4.1991, he was given the seniority in the cadre of Senior Gangman with effect from 1.3.1993. In such a situation, in Kavali Section the respondents 1 and 2 herein, viz., Ch.Vemaiah and Kota Reddy, were already promoted as Senior Gangmen with effect from 1.3.1993 by the time Venkata Subbaiah joined them on 11.8.1995. So, the issue that arises for consideration is as to how the seniority should be fixed among these three persons.

9. The fact remains that all these three persons are deemed to have been promoted to the post of Senior Gangmen on 1.3.1993. Respondents 1 and 2 herein were promoted as Senior Gangmen in Kavali Section from 1.3.1993 whereas the person who came on mutual transfer, Venkata Subbaiah carried with him the date of seniority as 1.3.1993. In such a situation if all these three persons are deemed to be promoted on 1.3.1993, the seniority has to be decided on the basis of their age.

10. It is not in dispute that the respondents 1 and 2, Ch.Vemaiah and Kota Reddy, are elders in age than Venkata Subbaiah and therefore Venkata Subbaiah cannot claim seniority over these two respondents. Even though the Tribunal has allowed the OA basing on Para-312, yet taking into consideration the contention of the Railways, Para-310 of the Manual has to be invoked. Even Para-310 of the Manual is invoked, still the situation remains unaltered on the principle of age, which is made applicable in such a situation. Under these circumstances we come to the same conclusion that the respondents 1 and 2 are seniors to Venkata Subbaiah. Thus, though we find that the transfer was justified in relying on Para-312 of the Manual, yet Mr.Venkata Subbaiah cannot be treated as senior for the aforesaid reasons.

11. Accordingly the Writ Petition is dismissed. No costs. However, the Railways shall take appropriate action in pursuance of the order passed by this Court within a period of four (04) weeks from the date of receipt of a copy of this order.

(G.BIKSHAPATHY, J.)

10th March, 2005.

(P.S.NARAYANA, J.)

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Assistant Divisional Engineer, South Central Railway, Ongole, Prakasam District.
2 The Senior Divisional Engineer, South Central Railway, Bezawada, Krishna District.
3 The Senior Divisional Personnel Officer, South Central Railway, Bezawada, Krishna District.
4 The Permanent Way Inspector, Kavali Section, South Central Railway, Kavali, Nellore District.

5 The Registrar, Central Administrative Tribunal, Hyderabad/

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